(20) 1343

No. 02-~~1964~~

Supreme Court U.S.
FILED
NOV 17 2003
OFFICE OF THE CLERK

In The
# Supreme Court of the United States

ENGINE MANUFACTURERS ASSOCIATION AND WESTERN STATES PETROLEUM ASSOCIATION,

*Petitioners,*

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *et al.*,

*Respondents.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF OF AMICI CURIAE AMERICAN ACADEMY OF PEDIATRICS (CALIFORNIA DISTRICT); AMERICAN CANCER SOCIETY, CALIFORNIA DIVISION, INC.; AMERICAN LUNG ASSOCIATION; CALIFORNIA MEDICAL ASSOCIATION; PHYSICIANS FOR SOCIAL RESPONSIBILITY; SAN BERNADINO COUNTY MEDICAL SOCIETY; SOCIETY FOR OCCUPATIONAL AND ENVIRONMENTAL HEALTH; AND UNION OF CONCERNED SCIENTISTS IN SUPPORT OF RESPONDENTS

PROF. DAVID M. DRIESEN
*Counsel of Record*
SYRACUSE UNIVERSITY
COLLEGE OF LAW
E.I. White Hall
Syracuse, NY 13244-1030
(315) 443-4218

November 17, 2003

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

36 pp

## QUESTION PRESENTED

Does the Clean Air Act preempt local requirements that vehicle fleet owners, including local governments, purchase available vehicles that comply with federally authorized California emission standards?

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| TABLE OF AUTHORITIES | iv |
| INTEREST OF AMICI CURIAE | 1 |
| INTRODUCTION: AIR POLLUTION'S IMPACT UPON PUBLIC HEALTH | 1 |
| SUMMARY OF ARGUMENT | 5 |
| ARGUMENT | 7 |
| I. Because *Sales Restrictions* are not "Standards Relating to" Emissions Control, Section 209 Does Not Preempt Fleet Purchase Requirements | 7 |
| II. Congress did Not Permit Implied Preemption | 9 |
| III. Local Government May Enact Fleet Procurement Requirements, Since Congress Did Not Clearly State that it Intends to Preempt Such Requirements | 11 |
| A. This Court Presumes that Congress does not Intend to Preempt Local Authority to Protect Public Health, Even When Congress Only Relies Upon Federal Authority to Achieve its Goals | 12 |
| B. Because Retention of Local Authority Serves the Act's Purpose of Protecting Public Health, Preemption Requires a Clear Statement | 14 |
| C. When Congress Relies Upon State and Local Authority as the Primary Means of Meeting a Federal Goal, Preemption Requires a Clear Statement | 16 |




TABLE OF CONTENTS – Continued


| | Page |
|---|---|
| D. Congress May not Usurp Local Policy Governing Procurement of Vehicles Delivering Traditional Municipal Services Without a Clear Statement | 19 |
| E. Congress Has not Clearly Stated that it Intends to Preempt Local Fleet Purchase Requirements | 21 |
| IV. Congress Did not Protect Manufacturers from the Influence of Economic Incentive Programs, Like Fleet Purchase Programs | 22 |
| A. Congress Intended to Encourage Economic Incentives Programs, Including Fleet Purchase Programs | 22 |
| B. Economic Incentive Programs Fall Outside the Scope of Preemption under this Court's Cases | 24 |
| CONCLUSION | 26 |

TABLE OF AUTHORITIES

Page

CASES

Allied Stores v. Bowers, 358 U.S. 522 (1959) .....14

American Auto. Mfrs. Ass'n v. Mass. Dep't Envtl. Prot., 163 F.3d 74 (1st Cir. 1998) .....10

Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1984) .....21

Atkin v. Kansas, 191 U.S. 207 (1903) .....20

Building and Constr. Trades Council of Metro. Dist. v. Associated Builders and Contractors, 507 U.S. 218 (1993) .....13, 19

California Div. of Labor Standards Enforcement v. Dillingham, 519 U.S. 316 (1997)..... 11, 13, 15, 16, 25

Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984).....15

Cipollone v. Ligett Group, Inc., 505 U.S. 504 (1992).....10, 14, 15

City of Columbus v. Ours Garage and Wrecker Service, 536 U.S. 424 (2002).....22

Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000).....13

Egelhoff v. Egelhoff, 532 U.S. 141 (2001) .....23

Geier v. American Honda Motor Co., 529 U.S. 861 (2000).....10, 11, 16

Gregory v. Ashcroft, 501 U.S. 452 (1991).....20

Hines v. Davidowitz, 312 U.S. 52 (1941) .....15

Hohn v. United States, 524 U.S. 236 (1998) ..... 8

Hughes v. Alexandria Scrap, 426 U.S. 794 (1976).....19, 20



TABLE OF AUTHORITIES – Continued

Page

Huron Portland Cement v. Detroit, 362 U.S. 440 (1960)..... 12-14

Medtronic v. Lohr, 518 U.S. 470 (1996) .....5, 13, 16

Motor & Equipment Mfrs. Ass'n v. EPA, 627 F.2d 1095 (D.C. Cir. 1979).....23

New State Ice v. Liebman, 285 U.S. 262 (1932) .....23

New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins., 514 U.S. 645 (1995).....*passim*

New York v. United States, 505 U.S. 144 (1992).....17, 18

Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1 (1981).....18

Perkins v. Lukens Steel, 310 U.S. 113 (1940).....20

Pharmaceutical Research and Mfrs. of America v. Walsh, 123 S. Ct. 1855 (2003).....15

Printz v. United States, 521 U.S. 898 (1997).....21

Raygor v. Regents University of Minn., 534 U.S. 533 (2002).....6, 21

Shaw v. Delta Airlines, 463 U.S. 85 (1982).....12

Smith v. Robbins, 528 U.S. 259 (2000) .....23

South Dakota v. Dole, 483 U.S. 203 (1987) .....18

Train v. Natural Resources Defense Council, 421 U.S. 60 (1975).....14, 17

TRW, Inc. v. Andrews, 534 U.S. 19 (2001) ..... 7

Union Electric Co. v. EPA, 427 U.S. 246 (1976) ....14, 15, 23

United States v. Locke, 529 U.S. 89 (2000) .....13

TABLE OF AUTHORITIES – Continued

Page

Whitman v. American Trucking Ass'ns, 531 U.S. 457 (2001) ....14

Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989) ....17

Wisconsin Public Intervenor v. Mortier, 501 U.S. 597 (1991)....21

STATUTORY PROVISIONS

29 U.S.C. § 1144(a)....24

Clean Air Act (CAA) § 101, 42 U.S.C. § 7401 ....5, 14

CAA § 108(f), 42 U.S.C. § 7408(f)....9, 22

CAA § 110(a), 42 U.S.C. § 7410(a) ....12

CAA § 116, 42 U.S.C. § 7416....5, 9, 10

CAA § 174, 42 U.S.C. § 7504....14

CAA § 177, 42 U.S.C. § 7507....10

CAA § 179, 42 U.S.C. § 7509....18

CAA § 182(b)(4), 42 U.S.C. § 7511a(b)(4).... 9

CAA § 182(c)(4), 42 U.S.C. § 7511a(c)(4) ....25

CAA § 182(g)(4)(A), 42 U.S.C. § 7511a(g)(4)(A)....22

CAA § 202(i)(2), 42 U.S.C. § 7521(i)(2) ....11

CAA § 202(l), 42 U.S.C. § 7521(l)....11

CAA § 209(a), 42 U.S.C. § 7543(a).... 6-8

CAA § 209(b), 42 U.S.C. § 7543(b)....10

CAA § 209(d), 42 U.S.C. § 7543(d)....9, 10



TABLE OF AUTHORITIES – Continued

Page

CAA § 210, 42 U.S.C. § 7544.... 9

Part A-Motor Vehicle Emission and Fuel Standards, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554.... 9

FEDERAL REGISTER NOTICES

Approval and Promulgation of Implementation Plans, Texas, Houston/Galveston Ozone Nonattainment Area, 66 Fed. Reg. 35903 (2001) ....12

Clean Fuel Fleet Program, 63 Fed. Reg. 20103 (1998)....22

National Ambient Air Quality Standards for Particulate Matter: Final Rule, 62 Fed. Reg. 38651 (1997).... 3

LEGISLATIVE HISTORY

136 Cong. Rec. 4138 (1990)....24

136 Cong. Rec. 6463 (1990)....23

H.R. Rep. No. 101-490 (1990) .... 4

H.R. Rep. No. 90-728 (1967) .... 9

MISCELLANEOUS AUTHORITY

Abbey, David E. *et al.*, *Chronic Respiratory Symptoms Associated with Estimated Long-Term Ambient Concentrations of Fine Particulates Less Than 2.5 Microns in Aerodynamic Diameter (PM2.5) and Other Air Pollutants*, 5 J. Exposure Analysis & Envtl. Epidemiology 137 (1995).... 2

TABLE OF AUTHORITIES – Continued

Page

Avol, Edward A. *et al.*, *Respiratory Effects of Relocating to Areas of Differing Air Pollution Levels*, 164 Am. J. Respir. Crit. Care Med. 2067 (2001) ..... 4

California Air Resources Board and Office of Environmental Health Hazard Assessment, *Staff Report: Public Hearing to Consider Amendments to the Ambient Air Quality Standards for Particulate Matter and Sulfates* (2002), *at* http://www.arb.ca.gov/research/aaqs/std-rs/pm-final/pm-final.htm ..... 2-4

CARB & OEHHA, *Executive Summary for the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant* (1998), *at* http://www.oehha.ca.gov/air/toxic_contaminants/pdf1/diesel%20exhaust.pdf. ..... 2, 3

Department of Health Services, Center For Health Statistics, *Death Records* (2001), *at* http://www.applications.dhs.ca.gov/vsq/screen_age_dtha.asp?cnty_cd=AA&YEAR_DATA=2001&Criteria=1&Res_occ=Residence&Birth_Death=Death&stats=1&cod_cd=385 ..... 3

Driesen, David M., *The Economic Dynamics of Environmental Law* (2003) ..... 23

Fitz, Dennis R. *et al.*, *Characterizing the Range of School Bus Exposures During Childrens' Commutes* (2003), *at* http://www.arb.ca.gov/research/schoolbus/report.pdf. ..... 4, 20

Gardbaum, Stephen A., *The Nature of Preemption*, 79 Cornell L. Rev. 767 (1994) ..... 5



TABLE OF AUTHORITIES – Continued

Page

Gauderman, W. James *et al.*, *Association between air pollution and lung function growth in Southern California children*, 162 Am. J. Resp. Crit. Care Med. 1383 (2000) ..... 4

McQuillin, *Municipal Corporations* (1999) ..... 19

Peters, Annette *et al.*, *Increased Particulate Air Pollution and the Triggering of Myocardial Infarction*, 103 Circulation 2810 (2001) ..... 3

Plopper, Charles G. *et al.*, *Relationship of Inhaled Ozone Concentration to Acute Tracheobronchial Epithelial Injury, Site-specific Ozone Dose, and Glutathione Depletion in Rhesus Monkeys*, 19 Am. J. Respir. Cell Mol. Biol. 387 (1998) ..... 4

Pope III, C.A. *et al.*, *Lung Cancer, Cardio-Pulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution*, 287 JAMA 1123 (2002) ..... 3

Ritz, Beate *et al.*, *Ambient Air Pollution and Risk of Birth Defects in Southern California*, 1 Am. J. Epidemiology 17 (2002) ..... 2

Schwartz, Joel *et al.*, *The Concentration-Response Relationship Between PM(2.5) and Daily Deaths*, 110 Envtl. Health Persp. 1025 (2002) ..... 3

Starr, Kenneth *et al.*, *The Law of Preemption: A Report of the Appellate Judges Conference American Bar Association* (1991) ..... 10, 21

## INTEREST OF AMICI CURIAE

The American Academy of Pediatrics (California District); American Cancer Society, California Division, Inc.; American Lung Association; California Medical Association; Physicians for Social Responsibility; San Bernadino County Medical Society; Society for Occupational and Environmental Health; and Union of Concerned Scientists submit this brief as amici curiae.[1] Amici are public health groups concerned about preserving local and state authority to protect breathers from the serious health hazards associated with air pollution.

## INTRODUCTION: AIR POLLUTION'S IMPACT UPON PUBLIC HEALTH

Amici's member doctors and health professionals treat numerous patients suffering from a wide variety of air pollution related illnesses on a daily basis. Air pollution is an especially serious public health hazard in the Los Angeles area, and motor vehicle emissions constitute the largest single source of air pollution both nationally and in Los Angeles. J.A. 80. Vehicles emit air contaminants that scientists associate with cancer, asthma attacks, chronic bronchitis, hospitalization for lung and heart diseases, worsening of emphysema and chronic obstructive pulmonary

[1] The parties to this case have filed a blanket consent to the filing of amicus briefs with the Clerk of the Court. No party to this case has authored any part of this brief or made any monetary contribution toward its preparation and submission.

disease, low birth weights, premature birth, and premature death.[2]

A recent study of thirty toxic air pollutants estimates the cancer risk from those few pollutants at 1,400 per million people in the Los Angeles basin. J.A. 263. Vehicles account for ninety percent of this risk and diesel particulate alone accounts for seventy percent of it. Id. Dozens of studies relate diesel particulate to significant increases in lung cancer.[3]

Vehicle emissions afflict breathers with many other debilitating illnesses. Because they account for more than half of all hydrocarbons, nitrogen oxides, and carbon monoxide in the Los Angeles area, vehicle emissions have thwarted efforts to achieve federal health-based air quality standards for smog (ozone), soot (particulate), and carbon monoxide in the Los Angeles basin, standards adopted to protect the public from extremely widespread

[2] J.A. 254-255; California Air Resources Board (CARB) and Office of Environmental Health Hazard Assessment (OEHHA), *Staff Report: Public Hearing to Consider Amendments to the Ambient Air Quality Standards for Particulate Matter and Sulfates*, 7-48; 7-75-77 (2002), *at* http://www.arb.ca.gov/research/aaqs/std-rs/pm-final/pm-final.htm; Beate Ritz *et al.*, *Ambient Air Pollution and Risk of Birth Defects in Southern California*, 1 Am. J. Epidemiology 17 (2002); David E. Abbey *et al.*, *Chronic Respiratory Symptoms Associated with Estimated Long-Term Ambient Concentrations of Fine Particulates Less Than 2.5 Microns in Aerodynamic Diameter (PM2.5) and Other Air Pollutants*, 5 J. Exposure Analysis & Envtl. Epidemiology 137 (1995).

[3] CARB & OEHHA, *Executive Summary for the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant* ES-20 (1998), *at* http://www.oehha.ca.gov/air/toxic_contaminants/pdf1/diesel%20exhaust.pdf.



air pollution related disease. J.A. 80, 141.[4] Nationally, scientists associate particulate with tens of thousands of annual deaths and risks of both heart attacks and lung cancer.[5] The California Air Resources Board (CARB) estimate of the number of annual particulate deaths in California exceeds the number of people that die annually in California automobile accidents.[6] CARB also estimates that air pollution causes hundreds of thousands of annual asthma attacks in California, two thousand of which require emergency room visits, usually because the victim has difficulty breathing.[7] Carbon monoxide hinders the transportation of oxygen to human tissue and therefore

[4] Volatile organic compound and nitrogen oxides emissions from vehicles produce both ozone and particulate. National Ambient Air Quality Standards for Particulate Matter: Final Rule, 62 Fed. Reg. 38651, 38652 (1997); J.A. 244, 251. Most hydrocarbons include many volatile organic compounds and some other compounds. *See* J.A. 244 (discussing VOCs and "other hydrocarbon materials").

[5] *See* Joel Schwartz *et al.*, *The Concentration-Response Relationship Between PM(2.5) and Daily Deaths*, 110 Envtl. Health Persp. 1025, 1028 (2002); C.A. Pope III *et al.*, *Lung Cancer, Cardio-Pulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution*, 287 JAMA 1123 (2002); Annette Peters *et al.*, *Increased Particulate Air Pollution and the Triggering of Myocardial Infarction*, 103 Circulation 2810 (2001). More than 98% of the particles emitted from diesel engines are in the fine particle range of ten microns or less, and 92% are less than one micron in diameter. CARB & OEHHA, *Executive Summary*, *supra* at ES-6. These tiny particles can bypass respiratory defense mechanisms and penetrate deep into the lungs.

[6] CARB & OEHHA, *Staff Report*, *supra* at 1-3 (particulate kills 6,500 persons per year); Department of Health Services, Center For Health Statistics, *Death Records* (2001), *at* http://www.applications.dhs.ca.gov/vsq/screen_age_dtha.asp?cnty_cd=AA&YEAR_DATA=2001&Criteria=1&Res_occ=Residence&Birth_Death=Death&stats=1&cod_cd=385 (3,971 traffic deaths).

[7] CARB & OEHHA, *Staff Report*, *supra* at 9-22.

can cause fetal brain damage and pose grave risks for those with heart disease. H.R. Rep. No. 101-490, 148-149, *reprinted in* Senate Committee on Energy and Commerce, A Legislative History of the Clean Air Act Amendments of 1990, at 3172-73 (1993) (1990 Leg. Hist.).

Los Angeles has the worst air quality in the country, primarily because of the vehicle pollution that the rules at issue in this case target. J.A. 245. This air quality poses especially grave risks for children. Air pollution seriously damages children's lungs, impeding normal lung growth, aging young lungs prematurely, and decreasing lung function.[8] A recent study explains that children riding school buses face especially great exposure to pollution from diesel buses and other vehicles. *See* Dennis R. Fitz *et al.*, *Characterizing the Range of School Bus Exposures During Childrens' Commutes* 1 (2003), *at* http://www.arb.ca.gov/research/schoolbus/report.pdf. And children's narrow airways and less developed lungs leave them more susceptible to asthma attacks and other air pollution related afflictions than the general population anyway. *See generally* id. at 1. Air pollution also has especially severe effects upon elderly people with pre-existing heart or lung disease.[9]

---

[8] Edward L. Avol *et al.*,, *Respiratory Effects of Relocating to Areas of Differing Air Pollution Levels*, 164 Am. J. Respir. Crit. Care Med. 2067, 2069 (2001); W. James Gauderman *et al.*, *Association between air pollution and lung function growth in Southern California children*, 162 Am. J. Resp. Crit. Care Med. 1383 (2000); Charles G. Plopper *et al.*, *Relationship of Inhaled Ozone Concentration to Acute Tracheobronchial Epithelial Injury, Site-specific Ozone Dose, and Glutathione Depletion in Rhesus Monkeys*, 19 Am. J. Respir. Cell Mol. Biol. 387, 396-99 (1998).

[9] CARB & OEHHA, *Staff Report*, *supra* at 7-55.



The South Coast Air Quality Management District (SCAQMD) developed its fleet purchase requirements precisely because they were needed to "meet . . . federal ambient air quality standards" and address the public health disaster associated with diesel particulate and other vehicular emissions. J.A. 80, 141, 151. Congress passed the Clean Air Act (Act) to encourage local efforts to protect public health in this manner. Since the Act does not expressly preempt the use of local procurement authority as an economic incentive for clean air, this Court should uphold this effort to address grave and widespread health problems.

## SUMMARY OF ARGUMENT

The very purposes of the Act are to protect public health and to encourage local action toward that end. *See* 42 U.S.C. § 7401. The Supremacy Clause prohibits state regulation conflicting with federal law, but does not thwart local initiatives that the national government demands to achieve federal objectives. *See Medtronic v. Lohr*, 518 U.S. 470, 485-86 (1996) (the purpose of Congress is the ultimate touchstone in preemption cases). *See generally* Stephen A. Gardbaum, *The Nature of Preemption*, 79 Cornell L. Rev. 767, 770-71 (1994) (arguing that preemption properly deals only with direct conflicts between federal and state law).

Consistent with these purposes, Congress established a rule broadly preserving state and local authority to protect public health through both "standard[s]" and "requirement[s]." 42 U.S.C. § 7416. This case concerns the scope of an exception to this general rule. That exception

preempts "standard[s] relating to" control of new vehicle emissions. *See* 42 U.S.C. § 7543(a). The petitioning Manufacturers argue that fleet purchase requirements constitute standards relating to emissions control, because *sales restrictions* constitute standards relating to emissions control under the first sentence of section 209(a). Pet. Br. at 25. But that vehicle standards provision does not even reach emissions related sales restrictions. Construing the vehicle standards provision to reach sales restrictions would render the second sentence of section 209(a), which specifically preempts sales restrictions, superfluous. *See* 42 U.S.C. § 7543(a). Because sales restrictions are not "standards relating to" emissions control, neither are fleet purchase requirements.

Since Congress has not clearly stated that it intends to preempt local authority to impose fleet purchase requirements, the Court should preserve that authority. *See Raygor v. Regents University of Minn.*, 534 U.S. 533, 543 (2002). Absent an unmistakably clear statement showing that Congress has confronted the issue, the Court should assume that Congress does not intend to couple a demand for clean air with broad denial of the authority needed to actually protect the public from air pollution. Congress also may not alter the usual state/federal balance by preempting state and local regulation governing the procurement of vehicles delivering traditional municipal services, like garbage collection and public transportation, through vague general language.

Moreover, Congress did not intend to insulate manufacturers from increased demand for vehicles less damaging to peoples' health. Indeed, it clearly encouraged economic incentives addressing vehicle emissions. This Court has held that programs only influencing the



economic incentives facing beneficiaries of preemption do not "relate to" employee benefit plans. *See, e.g., New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins.*, 514 U.S. 645, 658-59 (1995) (unanimous opinion). Because the Clean Air Act specifically encourages economic incentive programs, this precedent shows that fleet purchase rules, which likewise simply change the economic incentives facing preemption beneficiaries, do not constitute standards relating to the control of new vehicle emissions. The Act's plain language, purpose, and structure support retention of local procurement authority as a source of economic incentives.

## ARGUMENT

### I. Because *Sales Restrictions* are Not "Standards Relating to" Emissions Control, Section 209 Does Not Preempt Fleet Purchase Requirements.

It is a "cardinal rule of construction" that courts interpret statutes as a whole, harmonizing their provisions so that no word or provision becomes superfluous. *See TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001). In this case, simply harmonizing the two sentences of section 209(a) shows that the Act does not preempt fleet purchase requirements.

Congress partially preempted only direct regulation of new vehicle emissions control and one form of indirect regulation. The first sentence of section 209(a) prohibits direct regulation of the manufacturing process, while the second sentence prohibits indirect regulation through a sales restriction. *See* 42 U.S.C. § 7543(a). Absent the second sentence, states might refuse to title a vehicle unless the state approved its emissions control system. *See*

id. The second sentence, not the first, prohibits states from making a "certification ... relating to" new vehicle emissions control a "condition precedent to the ... sale, titling or registration" of a vehicle. Id.

Section 209(a)'s specific express preemption of sales restrictions bars an inference that fleet purchase requirements are preempted. The exceedingly specific language of the second sentence simply does not mention purchase requirements. *See* id. Section 209(a)'s second sentence expressly preempts certain sales restrictions, not purchase requirements.

Nor do fleet purchase requirements constitute "standards relating" to new vehicle emissions control under section 209(a)'s first sentence. *See* id. The petitioning Manufacturers argue that fleet purchase requirements constitute "standards relating to" emissions control, because purchase is the flip side of sales (no purchase, no sale). Pet. Br. at 25. But *sales restrictions* do not constitute "standards relating" to emissions control under section 209(a)'s first sentence. If section 209's first sentence reached sales restrictions that indirectly cause manufacturers to reduce emissions, there would be no need for the second sentence. *Cf. Hohn v. United States*, 524 U.S. 236, 249 (1998) (disfavoring construction of one provision that renders another superfluous). Congress added the second sentence, precisely because the first sentence only reached direct regulation.

Because sales restrictions are not "standards relating to" emissions control under section 209's first sentence, neither are fleet purchase requirements. Section 209(a) provides no literal support for the Manufacturers' argument, because the very specific second sentence, which prohibits



sales restrictions, does not reach purchase requirements, and the first sentence's potentially ambiguous language must be read to apply only to direct regulation of emissions control in order to avoid making the second sentence superfluous.

## II. Congress Did Not Permit Implied Preemption.

Manufacturers' argument has no literal basis. Rather, it involves a plea to imply preemption of purchase requirements in the face of a statutory provision retaining state authority, except in the case of "certain" rules expressly preempted in section 209(a). *See* 42 U.S.C. § 7416.

Section 209(d) shows that Congress did not intend to reach all programs addressing vehicle emissions, because it preserves state authority to enact vehicle inspection and maintenance programs and restrict driving in order to reduce emissions. 42 U.S.C. § 7543(d). *See also* 42 U.S.C. §§ 7408(f), 7511a(b)(4), 7544. Congress added this provision as part of a general effort to resolve uncertainty about the scope of state authority to regulate vehicle pollution to avoid litigation. H.R. Rep. No. 90-728, at 21, *reprinted in* 1967 U.S.C.C.A.N. 1938, 1956. Section 209(d) states that "nothing in this *part*" preempts state regulation of licensed vehicles. Id. (emphasis added). The term "this part" refers part A of subchapter two of the Act, which addresses "motor vehicle emission and fuel standards." *See* 42 U.S.C. §§ 7521-7554. This language shows that federal fuel and vehicle regulation should not give rise to field preemption or any other form of implied preemption.

Congress affirmed this decision not to risk the uncertainty of implied preemption by expressly preserving

state authority in section 116. *See* 42 U.S.C. § 7416; Kenneth Starr *et al.*, *The Law of Preemption: A Report of the Appellate Judges Conference American Bar Association*, 54-55 & n. 241 (1991) (citing section 116 as an example of detailed lawmaking that makes implied preemption inappropriate). *Cf. Cipollone v. Ligett Group, Inc.*, 505 U.S. 504, 517 (1992) (matters beyond the reach of expression preemption clause are not preempted); *Geier v. American Honda Motor Co.*, 529 U.S. 861, 874-75 (2000) (implying preemption of tort suits conflicting with statutory goal of advancing safety). In keeping with the Act's health protective purpose, section 116 broadly preserves state authority to enact "any" requirements or standards more stringent than federal rules, while broadly preempting any authority to adopt less stringent law. 42 U.S.C. § 7416. Thus, Congress preserved authority to impose fleet purchase requirements.

Section 209(d) does not indicate that Congress believed that section 209(a) had a broad enough reach to preempt state authority to regulate titled vehicles. When Congress thought that section 209 preemption reached authority it wanted to preserve, it expressly exempted that authority from preemption under section 209 with a specific reference to that section. *See, e.g.*, 42 U.S.C. §§ 7543(b), 7507 (allowing the nation's strictest regulator, California, to regulate vehicle emissions and other states to copy strict California standards notwithstanding preemption under section 209(a)). *See also American Auto. Mfrs. Ass'n v. Mass. Dep't Envtl. Prot.*, 163 F.3d 74, 78 (1st Cir. 1998) (EPA granted a waiver in 1993 for California standards requiring that 2% of vehicles be zero emission vehicles). The absence of this specific reference in section 209(d) confirms the narrowness of section 209(a) preemption. In



keeping with the Act's overall purpose, the statute strictly limits any exceptions to the general rule preserving state authority to enact programs protecting public health. *Cf. Geier*, 529 U.S. at 867-68 (reading a preemption clause narrowly to harmonize it with a saving clause).

## III. Local Government May Enact Fleet Procurement Requirements, Since Congress Did Not Clearly State that it Intends to Preempt Such Requirements.

Even if the Act's plain language did not settle this case in SCAQMD's favor, the strong presumption against preemption appropriate here requires retention of local authority. This presumption would resolve any ambiguity in section 209, including any ambiguity about the meaning of the term "standards," and the phrase "standards relating to" emissions control. This Court's recent preemption jurisprudence recognizes that the words "relate to" cannot resolve preemption issues in isolation, since "everything is related to everything else." *California Div. of Labor Standards Enforcement v. Dillingham*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring) (citations omitted). *Accord Travelers*, 514 U.S. at 655 (unanimous opinion). That observation applies fully to the Clean Air Act. Indeed, under the Act, one could argue that even regulation of factory emissions is "related to" new vehicle emissions, since less reductions from factories implies a greater need for more vehicle emission reductions to meet the Act's health protective goals. *See, e.g.*, 42 U.S.C. §§ 7521(i)(2) (requiring EPA consideration of the need for more reductions in establishing "tier two" vehicle standards); 7521(l) (requiring vehicle toxics regulation if needed). And all state demonstrations that their air pollution control

programs provide for attainment of ambient air quality standards, which the Act requires, must refer to federal or California vehicle emission standards in order to project emission reduction budgets. *See* 42 U.S.C. § 7410(a). *See, e.g.*, Approval and Promulgation of Implementation Plans, Texas, Houston/Galveston Ozone Nonattainment Area, 66 Fed. Reg. 35903, 35904 (2001) (describing a reference to the federal vehicle emissions control program in a state implementation plan). So, consistency with Congressional intent with respect to the Clean Air Act requires a narrower approach than that sometimes employed in cases interpreting the Employee Retirement Income Security Act of 1974 (ERISA). *Cf. Shaw v. Delta Airlines*, 463 U.S. 85, 97 (1982) (explicit reference to an ERISA plan justifies preemption, *"unless there is good reason to believe that Congress intended" otherwise*) (emphasis added). Because preemption in this case would frustrate achievement of the Act's health protection goal, deny local government authority needed to meet federal demands, and impinge on local authority to establish procurement policies for vehicles delivering traditional municipal services, preemption requires a clear statement expressly limiting fleet purchase requirements. The Act contains no such statement.

### A. This Court Presumes that Congress Does Not Intend to Preempt Local Authority to Protect Public Health, Even When Congress Only Relies Upon Federal Authority to Achieve its Goals.

The mere fact that control of air pollution clearly lies within the police power of the state suffices to trigger a presumption against preemption. *See Huron Portland*



*Cement v. Detroit*, 362 U.S. 440, 442 (1960) (local air pollution ordinance involves exercise of the "most traditional concept of . . . the police power"); *Building and Constr. Trades Council of Metro. Dist. v. Associated Builders and Contractors*, 507 U.S. 218, 224 (1993) (applying the presumption against preemption to the relatively new field of labor law). The Court declines to invoke this presumption only in areas that have a very long history of Congressional legislation and usually some constitutional doubt about the legitimacy of state regulation. *See, e.g., Crosby v. National Foreign Trade Council*, 530 U.S. 363, 375-76 (2000) (President's foreign affairs power "controls the issue" of whether a federal statute preempts state sanctions imposed upon Burma); *United States v. Locke*, 529 U.S. 89, 108 (2000) (declining to apply presumption against preemption, because Congress has regulated maritime affairs from the "beginning of the Republic" and doubt exists about the validity of concurrent state power in this area). Neither factor is present here. This presumption informs interpretation of express preemption provisions, just as it informs implied preemption. *Medtronic*, 518 U.S. at 485. And the presumption forbids preemption "unless that was the clear and manifest purpose of Congress." *Travelers*, 514 U.S. at 655 (provision preempting law that relates to an employee benefit plan construed narrowly to avoid reading the "clear and manifest" intent rule out of the law); *Dillingham*, 519 U.S. at 325.

### B. Because Retention of Local Authority Serves the Act's Purpose of Protecting Public Health, Preemption Requires a Clear Statement.

Section 101(b) of the Act explicitly establishes its purposes. The elected government declared a single overarching purpose, to preserve and "enhance" air quality in order to protect public health and welfare. *See* 42 U.S.C. § 7401(b)(1); *Union Electric v. EPA*, 427 U.S. 246, 266 (1976) (prompt attainment of air quality standards is the Act's "primary purpose"). It then explicitly set out additional purposes that serve this larger purpose, most importantly, encouragement of "regional air pollution prevention and control programs" like those of the SCAQMD. 42 U.S.C. § 7401(b)(4); *Huron*, 362 U.S. at 445 (citing Congressional policy, established in the 1955 Clean Air Act, of protecting local government rights to control air pollution). *See also* 42 U.S.C. § 7504 (requiring state decisions about which functions local officials will perform).

The purposes set out in section 101(b) constitute the sole purposes of the Act. *See Allied Stores v. Bowers*, 358 U.S. 522, 530 (1959) (when a statute expressly declares its purpose there is "no room to conceive of any other purpose . . ."); *Cipollone*, 505 U.S. at 514 (deriving the Federal Cigarette Labeling and Advertising Act's purpose from explicit statutory statements of purpose). Congress pursued its health protection goal with rare single-mindedness. *See Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 471 (2001) (EPA may not consider cost in setting national ambient air quality standards); *Union Electric*, 427 U.S. at 256 (EPA may not consider cost and feasability in deciding whether to approve state implementation plans); *Train v. Natural Resources Defense Council*, 421 U.S. 60, 64 (1975) (Congress decided to "take a stick to the states" to get



them to achieve clean air). It only took into account considerations competing with the statutory health protection goal in ways that would not interfere substantially with that goal. *See, e.g., Union Electric*, 427 U.S. at 266 (states may consider cost and feasability when such consideration does not interfere with attainment of air quality standards). *Cf. Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 851 (1984) (describing economic considerations as a purpose of one of the Act's sections, but not of the Act as a whole).

When local authority aids achievement of federal objectives, the Court should preserve local authority absent a clear statement precluding its exercise. The Court invokes a presumption against preemption even where some tension exists between state law and federal goals. When local authority stands as an aid, not an obstacle, to the accomplishment of federal purposes, normal preemption principles make the presumption especially powerful. *See Pharmaceutical Research and Mfrs. of America v. Walsh*, 123 S. Ct. 1855, 1869 (2003) (presumption against preemption has "special force" when the two government pursue common purposes). *Cf. Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (preemption appropriate when state law stands as an obstacle to achievement of federal purposes).

In interpreting a clause preempting law "related to" employee benefit plans, this Court has recognized that statutory purpose guides determination of preemption's scope. *See Dillingham*, 519 U.S. at 325 (1997); *Travelers*, 514 U.S. at 656. Purpose is always the "ultimate touchstone" of preemption analysis. *See Cipollone*, 505 U.S. at 516. But the potential expansiveness of the phrase "related to" in isolation leaves a court rudderless unless it

tethers its interpretation to the statute's stated overarching purpose. *See Dillingham*, 519 U.S. at 325 (objectives of the statute become guide to the scope of preemption because "uncritical literalism" offers "scant utility" in discerning intent behind a provision preempting law that relates to employee benefit plans); *Travelers*, 514 U.S. at 656 (we must look into the objectives of the statute, because the text is unhelpful).

The principle that courts should, if fairly possible, construe a statute to serve its purpose supports retention of authority to regulate local fleet procurement. *See Medtronic*, 518 U.S. at 490-91 (declining to read an ambiguous preemption clause as undercutting the statutory purpose of protecting public health). Because attainment of air quality standards is impossible in many jurisdictions without significant state and local efforts to address vehicle emissions, the Court should interpret section 209(a) narrowly. Because the SCAQMD's fleet program serves the Act's goal of protecting public health, only a specific statement can make Congressional intent to preempt the program "clear and manifest." *Cf. Geier*, 529 U.S. at 874-75 (implying preemption of tort suits conflicting with the statutory goal of advancing safety).

### C. When Congress Relies Upon State and Local Authority as the Primary Means of Meeting a Federal Goal, Preemption Requires a Clear Statement.

This Court should not assume that Congress broadly preempted local authority to comply with a cooperative federalism scheme absent a clear statement showing that Congress intends such an incongruous result. It is extremely unlikely that Congress would vest states with



the primary responsibility to meet air quality standards, *Train*, 421 U.S. at 64 (1975), while simultaneously depriving them of the authority needed to achieve these vital goals. *See Travelers*, 514 U.S. at 667 (rejecting broad interpretation of preemption that would leave States "without ... authority to do just what Congress was expressly trying to induce them to do"). Strict application of the clear statement requirement assures that Congress has faced the issue of demanding state compliance with the federal health protection goal, while denying states the necessary tools. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65 (1989) (clear statement rule assures that Congress faces critical issues "affecting the federal balance") (citation omitted).

Preemption of local authority to meet federal goals through vague "relating to" language undermines democratic accountability. Concern about democratic accountability underlay this Court's holding in *New York v. United States* that Congress may not commandeer state enforcement of federal regulation. 505 U.S. 144, 161 (1992). If the federal government directs state officials to regulate, "state officials ... bear the brunt of public disapproval" of regulation, even though federal officials deserve the blame. *Id.* at 169. Thus, public health groups concerned about federally coerced local hazardous waste siting would blame local officials, rather than the federal officials really responsible. *See id.* at 149, 169.

This political accountability concern even more strongly disfavors reading a vague preemption clause as broadly limiting local authority under a statute that requires that authority's exercise to meet federal goals. This denial of authority effectively coerces state officials into not acting, while forcing them to take the blame for

not meeting popular goals that the federal government has encouraged them to meet. This commandeering of inaction under a cooperative federalism statute diminishes political accountability more thoroughly than openly requiring local regulatory action does. For this commandeering of inaction not only shifts the blame for failures to disempowered local officials, but also allows Congressional representatives to take undeserved credit for demanding that local government meet popular environmental goals. *Cf.* Starr, *supra* at 48 (judges preempting state law without "explicit Congressional guidance . . . assume a legislative role without accepting legislative responsibility."). Unless the Court requires Congress to make preemption decisions in "full view of the public", *New York*, 505 U.S. at 168, *i.e.* through a clear statement, preemption of authority under a cooperative federalism statute diminishes local and federal accountability.

A clear statement requirement also allows states to "knowingly" decide whether to meet the conditions the federal government has set in the Act for earning federal highway funds. *Cf. South Dakota v. Dole*, 483 U.S. 203, 207 (1987). In order to encourage states to protect public health, the Act requires a cutoff of highway funds if states fail to enact regulatory programs sufficient to meet national ambient air quality standards. *See* 42 U.S.C. § 7509. If the states (and their subdivisions) have doubts about the scope of their regulatory authority, they cannot know what programs they may rely upon to avoid the cutoff. Thus, the policy behind the rule that conditions on the receipt of federal funds must be unambiguous also supports the clear statement requirement in the context of cooperative federalism. *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 24 (1981).



### D. Congress May Not Usurp Local Policy Governing Procurement of Vehicles Delivering Traditional Municipal Services Without a Clear Statement.

Amici believe that their tax dollars should not fund purchases of relatively dirty vehicles further endangering their patients' health, when cleaner vehicles are available. Most of the rules at issue here apply to governmental and privately owned fleets used to deliver traditional municipal services, such as bus service and garbage collection. *See* J.A. 46, 52, 66, 80; McQuillin, *Municipal Corporations* §§ 29.32, text accompanying nn. 41 & 45 (1999) *Cf. Associated Builders*, 507 U.S. at 220 (describing government agency charged by legislature with supplying water, sewage collection, and waste treatment). The interpretation of law that Manufacturers and the Solicitor General seek preempts voluntary local decisions to purchase clean vehicles, since the elected local officials who are the local government instruct unelected bureaucrats to follow the voluntary decisions of the elected government through enactment of laws.

To deliver services, local governments must use their traditional procurement authority to obtain needed vehicles or contract for services from vehicle fleet owners. *See generally* McQuillin, *supra* § 28.01. *Cf. Associated Builders*, 507 U.S. at 221 (regional agency contracts with private firm for public purpose of cleaning up Boston harbor); *Hughes v. Alexandria Scrap*, 426 U.S. 794, 796-97 (1976) (state licensed wreckers to scrap vehicles to address problem of insufficient recycling of junked cars). Local and state governments usually provide a legal framework for purchases of vehicles to make sure that the purchased vehicles are safe and fit for their public purposes. *See, e.g.*, McQuillin, *supra* §§ 24.682, 24.698, 24.709, 29.28-.29,

29.52 (competitive bidding and duties of bus franchisees to use safe equipment). *Cf. Atkin v. Kansas*, 191 U.S. 207 (1903) (upholding state labor law applicable to private contractors building streets under a contract with a municipality). In Los Angeles, the emissions from the vehicles make them unsafe and therefore unfit. *See, e.g.*, Fitz, School Bus Study, *supra*. *Cf. Hughes*, 426 U.S. at 809-810 (state acts as a market participant when it offers a bounty to get local licensed processors to scrap cars as an environmental measure). The fleet purchase rules limit municipal use of taxpayer money to increase health hazards.

A federal usurpation of traditional government procurement authority, including the right to enact laws establishing the policies governing procurement (like the fleet purchase requirements), would alter the normal balance between federal and local law. *Cf. Perkins v. Lukens Steel*, 310 U.S. 113, 127-29, 132 (1940) (business has no standing to challenge a federal prevailing wage law, because government enjoys "unrestricted power" to establish its own procurement policy). The federal government can only usurp state and local authority to regulate procurement of vehicles performing traditional municipal functions through an "unmistakably clear" statement that shows that it has faced the relevant issue. *See Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991).

The *Gregory* Court relied upon the rule that preemption requires "clear and manifest" Congressional intent to preempt state law to justify its extension of the clear statement requirement beyond the realm of sovereign immunity waivers. *Id.* at 461 (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). When Congress intends to preempt historic state powers or legislate to



"affect the federal balance" in "traditionally sensitive" areas of local power, it must make its intention "unmistakably clear in the language of the statute."[10] *Raygor*, 534 U.S. at 543 (citations omitted). *See also* Starr, *supra* at 40-56 (explaining why the clear statement approach to preemption is appropriate). Absent a clear statement, the Court should assume that Congress does not intend to undermine mandatory local protection of public health by preempting fleet purchase requirements.

### E. Congress Has Not Clearly Stated that it Intends to Preempt Local Fleet Purchase Requirements.

While section 209(a) clearly reaches vehicle emission standards and certain sales restrictions, it does not clearly state that it reaches regulation of fleet procurement. *Cf. Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 607 (1991) ("mere silence" in the context of a statute authorizing state regulation of pesticides cannot show clear and manifest intent to preempt local authority); *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 245-46 (1985) (general language authorizing suits against "any recipient of Federal assistance" does not authorize suits against state governments receiving federal funds). In light of the evidence that the term "standards" has a narrow meaning under the Act, the indisputable ambiguity of the words "relating to" in isolation, and the overwhelming structural evidence that section 209(a)'s first sentence only reaches

[10] Of course, these concerns apply fully when local government exercises its authority, which derives from that of the state. *See Printz v. United States*, 521 U.S. 898, 931 n. 15 (1997).

vehicle emission standards, it just cannot be said that Congress had a "clear and manifest" intent to preempt authority to use fleet procurement as an economic incentive for clean air. *Cf. City of Columbus v. Ours Garage and Wrecker Service*, 536 U.S. 424, 432-34 (2002) (finding no clear and manifest intention to preempt local authority, even when normal principles of statutory construction would support preemption).

## IV. Congress Did Not Protect Manufacturers from the Influence of Economic Incentive Programs, Like Fleet Purchase Programs.

This Court has rejected the notion that programs merely influencing the economic incentives facing the beneficiaries of federal preemption fall within the scope of preemption in its ERISA jurisprudence. Since Congress called on states to enact economic incentive programs to influence vehicle emissions, section 209 does not preempt fleet purchase programs.

### A. Congress Intended to Encourage Economic Incentives Programs, Including Fleet Purchase Programs.

The Act encourages states to create "economic incentives and requirements to reduce vehicle emissions." 42 U.S.C. §§ 7408(f), 7511a(g)(4)(A). That is precisely what fleet purchase programs do. *Accord* Clean Fuel Fleet Program, 63 Fed. Reg. 20103, 20104 (1998); 136 Cong. Rec. 6463 (1990), *reprinted in* 4 1990 Leg. Hist. at 7209 (1993) (statement of Senator Levin). They create inducements to sell clean vehicles by providing a pool of customers who will buy them, if they are available. Manufacturers have



no obligation to sell them a single vehicle. *See* 136 Cong. Rec. 6463 (fleet program avoids "mandated production and sale"). *Cf. Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001) (preempted state law binds ERISA plan administrators to a particular set of rules for determining plan beneficiaries). But they can make more money if they do. Creation of a market creates an economic incentive to sell clean vehicles, not a standard regulating vehicle emissions.

This encouragement of economic incentives forms part of a Congressional policy to use California as a "laboratory for innovation." *Motor & Equipment Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1111 (D.C. Cir. 1979). *Cf. Travelers*, 514 U.S. at 667-68 n. 6 (Congressional intention to encourage state experimentation supports finding that ERISA rate regulation does not reach state health care cost controls). Our federalism contemplates local experimentation as a means of trying to solve pressing social problems. *See New State Ice v. Liebman*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting); *Smith v. Robbins*, 528 U.S. 259, 272 (2000). The SCAQMD's fleet purchase program constitutes an innovation creatively using economic incentives to address a critical public health problem.

This use of economic incentive measures also serves the Act's policy of encouraging the advance of clean technology, albeit by means other than "forcing" technology through command and control standards. *Cf. Union Electric*, 427 U.S. at 257-59 (discussing Congressional intent to force the development of technology that appeared infeasible). Command and control regulation often fails to encourage innovation. By contrast, consumer demand provides a continuous incentive for many types of innovation, but not for innovations delivering public goods like environmental protection. *See* David M. Driesen, *The Economic Dynamics*

*of Environmental Law* 93, 98-105 (2003). Local experimentation with incentives to encourage production of cleaner vehicles through consumer demand, rather than mandatory regulation of manufacturing processes, may aid encouragement of innovation advancing the state of the art. 136 Cong. Rec. 4138 (1990), *reprinted in* 4 1990 Leg. Hist. at 5778 (statement of Senator Wirth).[11] Such innovation is important in the Los Angeles area, because land use patterns built around the automobile and topography have produced air quality problems that resist conventional solutions. Innovation can increase national capacity to address intractable environmental problems.

### B. Economic Incentive Programs Fall Outside the Scope of Preemption Under this Court's Cases.

This Court has held that a clause preempting laws that "relate to ... employee benefit plans," 29 U.S.C. § 1144(a), does not reach laws that simply provide economic incentives. In *Travelers*, a unanimous Court upheld a New York law that required hospitals to charge private health insurance plans more for hospital care than Blue Cross/Blue Shield plans. 514 U.S. at 649. The Court recognized that this economic incentive has an "economic effect on choices" ERISA plan administrators make about which type of insurance to purchase. *Id.* at 659. But it

[11] Senator Wirth offered his comments with respect to an Amendment that failed, but included requirements similar in form to the fleet purchase requirements passed in the 1990 Amendments and in the SCAQMD fleet purchase rules – requirements that impose purchase requirements on fleet owners.



distinguished "indirect economic influence" from preempted mandates binding administrators to a particular choice. *Id.* A unanimous Court explained that the prior cases finding preemption under ERISA "**mandated** employee benefit structures or their administration." *Id.* at 658 (emphasis added). Thus, *Travelers* held that even under the older ERISA cases, economic incentive programs do not "relate to" employee benefit plans.

This distinction between mandates and economic incentive programs likewise controlled *Dillingham*, 519 U.S. 316. That decision upheld a California law allowing contractors to pay apprentices in qualified apprentice programs a lower wage than the prevailing wage otherwise required. *Id.* at 319. Even though an apprenticeship program financed through a separate fund constitutes an employee benefit plan, *id.* at 326, the Court held that the law authorizing the administrators of these benefit plans to pay plan beneficiaries lower wages does not "relate to" such a plan, *id.* at 334. It justified this decision by distinguishing non-preempted state statutes that "alter the incentives facing ERISA plans" from preempted laws that "dictate the choices" of ERISA plan administrators. *Id.* at 334.

The principle that preemption does not reach economic incentive programs applies here, since the fleet purchase rules change the incentives vehicle manufacturers face, rather than dictate their vehicle production choices. Just as laws altering the economic incentives influencing ERISA plan administrators do not "relate to" ERISA plans, fleet purchase requirements are not "standards relating to" control of new vehicle emissions. Since the Act specifically encouraged economic incentives in general and fleet purchase programs in particular, *see* 42 U.S.C. § 7511a(c)(4),

the Act does not protect vehicle manufacturers from rules increasing local demand for clean vehicles. Congress provided for preemption of vehicle emission standards in section 209, not local economic incentive programs.

## CONCLUSION

The Act preserves the authority to use local procurement as a source of economic incentives for clean air. These rules are requirements related to the purchase of vehicles, not standards related to the control of new vehicle emissions. The public health amici ask the Court to affirm the court of appeals ruling upholding SCAQMD's fleet purchase requirements.

Respectfully submitted,

PROF. DAVID M. DRIESEN
*Counsel of Record for the*
*Public Health Amici Curiae*